

DE 00-066

NEW HAMPSHIRE ELECTRIC COOPERATIVE, INC.

**Investigation into Applicability of Restructuring Charges
to Special Contract Customers**

Order Granting Interventions and Approving Procedural Schedule

O R D E R N O. 23,450

May 1, 2000

APPEARANCES: Dean, Rice & Kane, P.A. by Mark W. Dean, Esq. for New Hampshire Electric Cooperative, Inc.; Orr & Reno, P.A. by Howard M. Moffett, Esq. for Loon Mountain Recreation Corp., Waterville Company, Inc., Mount Attitash Lift Corp., Mount Cranmore, Inc. and SKI NH; Robert A. Bersak, Esq. for Public Service Company of New Hampshire; Heidi L. Kroll for the Governor's Office of Energy and Community Services; Michael W. Holmes, Esq., Consumer Advocate, on behalf of residential ratepayers; and Donald M. Kreis Esq. for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On December 20, 1999 (Order No. 23,369), the New Hampshire Public Utilities Commission (Commission) entered an order in Docket No. DR 98-097 approving the amended Restructuring Act compliance filing of the New Hampshire Electric Cooperative (NHEC). Order No. 23,369 endorsed a Settlement Stipulation, entered into by the parties to that docket and the Staff of the Commission, opening NHEC's service territory to retail competition, establishing the level of NHEC's stranded cost recovery and approving a proposed termination of NHEC's wholesale power contract with Public Service Company of New Hampshire (PSNH).

As part of the Settlement Stipulation approved in Order No. 23,369, NHEC agreed to ask the Commission to open a separate docket to address the question of whether six ski areas in NHEC's service territory should be required to pay system benefits charges, stranded cost charges and any other charges imposed against ratepayers under the Restructuring Act, RSA 374-F. These ski areas currently purchase electricity from NHEC at retail under special contracts previously approved by the Commission. NHEC purchases this power at wholesale from PSNH.

NHEC made the required filing on March 24, 2000. Thereafter, the Commission issued an Order of Notice that scheduled a prehearing conference for April 24, 2000 and directed that any petitions to intervene be filed by April 19, 2000. The Commission received intervention requests from PSNH, the Governor's Office of Energy and Community Services (GOECS), Rep. Jeb Bradley, and four of the six subject ski areas, appearing jointly: Loon Mountain Recreation Corp., Waterville Company, Inc., Mount Attitash Lift Corp. and Mount Cranmore, Inc. (collectively, the "Ski Area Intervenors"). Counsel for the Ski Area Intervenors also requested limited intervenor status for SKI NH, a trade association of 17 New Hampshire ski areas.

The prehearing conference took place as scheduled. There were no objections to any of the intervention requests, including the request by SKI NH for limited intervenor status, and they were accordingly granted. The Office of Consumer Advocate (OCA) entered an appearance on behalf of residential ratepayers. Thereafter, the parties and Staff were invited to state preliminary positions.

II. POSITIONS OF THE PARTIES AND STAFF

A. NHEC

NHEC does not wish to lose the revenue it receives from the special contracts with the six ski areas, having concluded that the loss of such revenue would not be wholly offset by a decrease in costs. NHEC's position is that the contracts should continue to be enforced according to their terms, which do not explicitly provide for the imposition of restructuring charges. However, NHEC concedes that the Commission likely has the authority to order the ski areas to pay Restructuring Charges. According to NHEC, the Commission could take such action by either modifying the contracts administratively or by nullifying them. NHEC's concern is that such action would cause the ski areas to opt for self-generation, thus imposing additional burdens on other NHEC customers.

B. PSNH

PSNH indicated that it agrees with NHEC's preliminary position. Further, PSNH notes that its customers would likely face increased stranded cost charges in the event the special contracts are terminated and, accordingly, PSNH loses the wholesale revenue associated with those contracts. PSNH did not dispute the contention in NHEC's written submission to the effect that PSNH has no recourse against NHEC should the ski areas no longer take retail service under the special contracts.

C. OCA

OCA drew the Commission's attention to the language in the special contracts at issue providing that each is "subject to state and federal statutes and regulations, as they may be amended from time to time, and to valid orders of any regulatory agencies or other governmental authorities having jurisdiction over the subject matter thereto." According to OCA, the Commission can and should decide whether it is in the public interest for the special contracts to continue, and for the ski areas to pay Restructuring Charges. OCA further took the position that the burden should be on the ski areas to show that the contracts continue to be needed.

D. GOECS

GOECS indicated that it has not yet developed a position on the issues raised by this docket, other than its view that System Benefits Charges and Stranded Cost Charges should generally be allocated equitably and in a manner that is consistent with the Restructuring Act.

E. Ski Area Intervenors

The Ski Area Intervenor indicated they have no preliminary position beyond their view that the special contracts remain valid and should be enforced according to their terms. According to the Ski Area Intervenor, they are aware of no reason to supercede or modify the special contracts.

F. Staff

According to Staff, the Restructuring Act requires the six special contract customers at issue here to pay Restructuring charges. In the alternative, Staff took the position that the Commission has the discretionary authority to determine that the public interest requires payment of the Restructuring Charges by these customers. Staff expressed the view that such action would not render the special contracts void, notwithstanding the language in the contracts providing for their termination on 60 days' notice if a Commission-ordered modification "materially adversely affects" any party

to the agreement.

III. PROCEDURAL SCHEDULE

Following the prehearing conference, the parties and Staff conducted a technical session at which they discussed, inter alia, a proposed procedural schedule. The parties and Staff agreed that this docket presents certain threshold legal issues and that the resources of the parties and the Commission would be most efficiently used if those legal issues were resolved first as, depending on the outcome, development of a full factual record may not be necessary. Accordingly, the parties and Staff agreed that Staff, and any other party contending that the Commission should or must impose Restructuring Charges on the six special contract customers, would submit a written brief on or before May 15, 2000. Opposition briefs would be due on or before June 5, 2000. Thereafter, the Commission would enter an order ruling on its discretionary authority to require the ski areas to pay Restructuring Charges. In the event the Commission determines it does have such discretionary authority, it would summon the parties to a status conference for the purpose of determining the further course of this docket.

We conclude that the procedural schedule is reasonable and will, therefore, approve it, anticipating that

we will make a determination as to any subsequent course of this proceeding upon the completion of the briefing contemplated by the parties. We ask the parties to address the question of the effective date of such charges, in the event such charges were to be found appropriate. Initial briefs may not exceed 25 pages, and reply briefs may not exceed ten pages in length.

Based upon the foregoing, it is hereby

ORDERED, that Representative Jeb Bradley, Public Service Company of New Hampshire, the Governor's Office of Energy and Community Service, Loon Mountain Recreation Corp., Waterville Company, Inc., Mount Attitash Lift Corp., and Mount Cranmore, Inc. are granted intervention; and it is

FURTHER ORDERED, that SKI NH is granted limited intervenor status; and it is

FURTHER ORDERED, that the procedural schedule delineated above is APPROVED.

By order of the Public Utilities Commission of New
Hampshire this first day of May, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary